

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

No. 18-CV-01119-RB-LF

**AFSCME COUNCIL 18; MICHELLE LUJAN
GRISHAM, in her official capacity as
Governor of New Mexico; and HECTOR
BALDERAS, in his official capacity as Attorney
General of New Mexico,**

Defendants.

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF UNION
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO
PLAINTIFF’S CROSS-MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 7.8, Defendant AFSCME Council 18 advises the Court of the recent decisions granting summary judgment to the union defendant in *Oliver v. SEIU Local 668*, ___ F.Supp.3d ___, 2019 WL 5964778 (“*Oliver I*”) (Ex. A), and to the government defendants in 2019 WL 5963226 (“*Oliver II*”) (Ex. B), on grounds equally applicable to this case. These decisions support all of Defendant’s arguments here.

The court held that the plaintiff’s prospective claims for relief are moot because she is no longer a union member, and no longer affected by those policies. *Oliver I*, 2019 WL 5964778, at

*7; *Oliver II*, 2019 WL5963226, at *3-4. See Defendant’s arguments at Dkt. 32, p.8; Dkt. 39, pp.4-6; Dkt. 45, p.2.

Oliver I also supports Defendant’s arguments because it holds that the plaintiff’s agreement to pay dues in exchange for union membership did not violate the First Amendment. 2019 WL 5964778, at *2-3. The court found that her membership agreement was a voluntary contract, that her right to refuse union membership was “established long before *Janus*,” and that “a subsequent change in the law” does not alter her bargain. *Id.*; see also *id.* at *3 (“[F]ederal courts have been unanimous in rejecting claims brought by former union members seeking to rescind membership retroactively.”). See Defendant’s arguments at Dkt. 32, pp.11-15; Dkt. 39, pp.6-16; Dkt. 45, pp.3-5.

The court also holds that the government’s “strictly ministerial” “role” in deducting employees’ authorized union dues does not establish the requisite state action to support a 42 U.S.C. §1983 claim. *Oliver I*, 2019 WL 5964778, at *4-6. Alternatively, it holds that the union had a defense based on its good-faith reliance on then-existing law. *Id.* at *7. See Defendant’s arguments at Dkt. 32, pp.17-20; Dkt. 39, pp.16-18; Dkt. 45, pp.8-10.

Oliver II holds that exclusive representation collective bargaining is constitutional under the binding Supreme Court precedent of *Minnesota State Board for Community Colleges v. Knight*, 461 U.S. 271 (1984), and that “*Janus* reaffirms rather than undermines *Knight*.” 2019 WL 5963226, at *5. See Defendant’s arguments at Dkt. 32, pp.20-25; Dkt. 39, pp.19-21; Dkt. 45, pp.10-12.

Dated: November 22, 2019

Respectfully submitted,

/s/ Eileen B. Goldsmith

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was electronically filed and served through the CM/ECF system this 22nd day of November, 2019, on all registered parties.

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